

Reconsideration is respectfully requested to the rejection of claims 49-71 under 35 U.S.C. §103 as set forth in paragraph numbers 9 and 10 wherein the essentially the same grounds of rejection are formulated based on U.S. Patent No. 4,990,892 (Guest) in combination with U.S. Patent No. 5,363,425 (Mufti) and U.S. Patent No. 3,403,381 (Haner). In the rejection found in paragraph 10 the Warren reference is used to show that per se a microcontroller is connected to a memory. While the same arguments in support of the rejection recognize that Guest does not disclose transmissions at varying intervals and using an algorithm, it was stated that Mufti discloses an identification system that includes transmitters having microcontrollers provided with software for an algorithm to provide the transmitter functions. It was further contended that Mufti discloses an analogous art identification system. Additionally, it was contended that Haner discloses a system using randomly varying repetition times rather than fixed times to prevent interferences between transmitters. The rejection is not well taken and is respectfully traversed. The Federal Circuit requires that a prior art reference be analogous art in order to be cited as a reference in finding an invention to be obvious under 35 U.S.C. §103. See In re Clay, 23 USPQ2d 1059 (1992). Mufti is non-analogous art. The ID badges in Mufti contain an RF transmitter that is used in a telephone network to receive incoming calls; to control access to a building or room according to the identity of the ID badge wearer; to monitor movement and

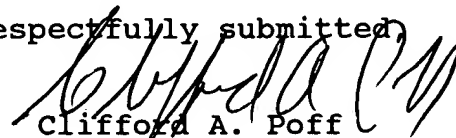
locations of specific material assets. While the Mufti device transmits a code, there is a failure to disclose or even suggest the use of a means responsive to an algorithm for controlling the means by which infrared pulse bursts are transmitted during predetermined time intervals. Moreover, unlike the Mufti reference, applicant's claims 49 and 65 call for the occurrence of each pulse burst in time relative to the start of each time interval varying under the control of the means responsive to the algorithm and using the unique binary identification code of that transmitter to prevent synchronization with other transmitters. Applicant's claims and disclosure makes no disclosure or teaching of the use of random intervals for bursts transmissions, in fact applicant reaches the opposite, namely, that the transmissions are controlled according to an algorithm. Therefore, the Mufti invention and the present invention cannot be considered as analogous. Moreover, it is only through hindsight use of applicant's own invention that the cited references may be combined to find the invention to have been obvious. It is not proper to select a certain feature of a prior art reference, wholly divorced from the context of the prior art invention taken as a whole. As the Federal Circuit stated in *In re Gorman*, 18 USPQ2d 1885 (1991), "[w]hen it is necessary to select elements of various teachings in order to form the claimed invention, we ascertain whether there is any suggestion or motivation in the prior art to make the selection ... [t]he references themselves

must provide some teaching whereby the applicant's combination would have been obvious". Id. at 1888.

In view of the foregoing, the instant application is believed to be in condition for allowance, and, therefore, an early issuance thereof is earnestly solicited.

If the Examiner believes that a telephone interview would be beneficial to advance prosecution of the instant application to early issue, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,


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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Commissioner of Patents and Trademarks, Washington, D.C.

20231, on February 8, 1996

Debra J. Koch
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Date: February 8, 1996